

**PATENT APPLICATION****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Jean-Pierre LUGUERN, et al.

Attorney Docket Q46923

Appln. No.: 08/941,236

**Official**

Group Art Unit: 2733



Filed: September 30, 1997

Examiner: A. Boakye

For: Congestion Control and Traffic Management System for Packet-Based Networks

**PETITION FOR WITHDRAWAL OF OFFICE ACTION OF FEBRUARY 14, 2000 AND  
ISSUANCE OF NEW ACTION, AND CONCURRENT REQUEST FOR REFUND**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Applicant hereby petitions to have the office action of February 14, 2000 withdrawn and a new office action issued. The grounds for the petition are as follows:

A first office action was mailed September 2, 1999, rejecting claims 1, 2, 4 and 5 over prior art, and indicating allowable subject matter in claim 3.

An Amendment was filed on December 2, 1999, amending the claims and traversing the prior art rejection of the claims. Attached hereto is a copy of the Amendment as filed, including a filing receipt stamped by the USPTO on December 2, 1999.

A Final office action was mailed on February 14, 2000, in which the examiner rejected claims 4 and 5 under 35 U.S.C. 112, second paragraph, due to an improper antecedent basis problem, and rejected claims 1, 4 and 5 over prior art, this time indicating allowable subject matter in claim 2 as well as claim 3.

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Applicants filed a Request For Reconsideration on May 10, 2000, pointing out to the examiner that he had apparently overlooked certain limitations in claim 1 that clearly distinguish over the prior art, and also pointing out that he had apparently overlooked the clear antecedent basis for terminology in claims 3 and 4.

An Advisory Action was mailed June 2, 2000, in which the examiner noted the distinguishing arguments of applicants, but dismissed the arguments on the basis that the features being relied on for patentability were not recited in the claim 1.

The undersigned saw that the limitations at issue are very clearly recited in claim 1, and called the examiner in June and July to find out what basis the examiner had for the comments in the Advisory Action, and the undersigned finally reached the examiner today, August 14, and discovered in a telephone conference with the examiner that the file copy of the amendment he is working from does not include page 2 of the amendment of December 2, 1999.

The undersigned did file a complete amendment, the file copy of the undersigned is complete, and the filing receipt of December 2, 1999 establishes that the amendment was timely filed. It is now clear that the amendments properly submitted on December 2, 1999 have not been considered. It is therefore requested that a new office action on the merits be issued wherein the amendment of December 2, 1999 is considered.

Since today is the last day of the six month period for responding to the final action mailed February 14, 2000, and since granting of this petition is not guaranteed, the undersigned must file a Notice of Appeal and extension request in order to ensure pendency of the case while the petition is considered. Since the Notice of Appeal and extension are necessitated by the an

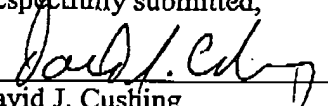
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office action which did not properly consider an earlier-filed amendment and which should be withdrawn, and since withdrawal of the February 14, 2000 office action will be effective as of the filing off this petition and will obviate need for the Notice of Appeal and extension, refund of the fees associated with the Notice of Appeal and Extension are hereby requested. Please credit the refund to our Deposit Account 19-4880.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

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Respectfully submitted,

  
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